

SB 45 Testimony – In support of, with amendment  
House Committee on Federal Relations, Energy, and Telecommunications  
Prepared by Energy Keepers, Inc.  
March 11, 2013

Hello Mr. Chairman, and members of the committee. My name is Jordan Thompson, and I am an attorney for Energy Keepers, a wholly owned corporation of the Confederated Salish & Kootenai Tribes ("CSKT"). It is an exciting time to be working for the tribes as we are set to be the first tribe in the country to wholly own and operate a major hydropower facility upon buying Kerr Dam from PPL Montana, set to occur in 2015.

Energy Keepers, Inc., supports SB 45, if the following change is made: we humbly ask that Section 1, subsection(10)(iii), be amended so that its retroactive date for existing hydro expansions, which is now December 31, 2010, be changed to December 31, 2005, the date originally written when this bill passed the legislature in 2009. This small change will allow additional energy created from a 2006 expansion to one of Kerr's turbines to qualify as an eligible renewable resource. The spirit of SB 45 will be promoted by this small change, as amending the retroactive date will 1) recognize a small amount of Kerr's power as the renewable resource that it is; 2) create fairness; and 3) be good for Montana's economy.

I'll briefly elaborate on each of these reasons now.

Reason 1: Kerr Provides Excellent Renewable Energy, and Making this Amendment would Recognize a Small Piece of Kerr's Energy as Such. Kerr, because of both natural conditions and the Tribe's vision for its resources, provides one of the cleanest and most reliable sources of renewable energy in the state. The dam is located within the exterior boundaries of the Flathead Reservation, CSKT's treaty-reserved homeland. It is situated on the natural falls of the Flathead River, which flows from the natural reservoir of Flathead Lake located just upstream from the dam. Because the dam is located on a natural waterfall, it did not disrupt upstream fish passage or create a new sediment trap that altered river health or water quality. The lands surrounding the project are being returned to a much healthier and natural state because of Tribal intervention in the 90's, which has allowed the Tribes to successfully implement an extensive natural resource restoration program to mitigate the environmental impacts of Kerr's historic operations.

Additionally, CSKT made the dam much more environmentally friendly when it required the dam to be changed from its original operating plan as a peaking facility to instead operate as a base-load facility. While the Tribes will see much less revenue by operating Kerr as a base-load facility, this better mimics natural flows and minimizes impacts to the environment thus aligning with our Tribal values and creating clean, environmentally-friendly renewable energy.

### Reason 2. Including Kerr's Expansion Power Creates Fairness

CSKT is currently set to pay for an upgrade that will not qualify as an eligible renewable resource, even though Kerr's upgrade meets all of the substantive criteria of SB 45. As mentioned, in 2006, the Kerr facility became even more energy efficient when PPL Montana (the current licensed owner of the Project) performed a major turbine renovation project that increased the electrical generation capacity and overall efficiency of the facility. The conveyance price the Tribes must pay PPL Montana is specifically laid out in the license, and it will require that CSKT pay for a major portion of this energy expansion upgrade on the turbine upon conveyance in 2015. This will leave CSKT in the inequitable position that it will actually be paying for an energy expansion project in 2015, but because the expansion power created from the project predates the current retroactive date of 2010, CSKT will not receive credit for this new investment.

Additionally, by making 2005 the eligibility date for a facility expansion, Kerr would be on equal footing with the other facility that performed energy expansions in the past, Rainbow Dam, whose expansion power is currently being recognized. The original bill introduced in 2009 had a retroactive clause that included both Rainbow Dam and Kerr's power expansions as eligible for renewable energy credits, while this bill contains only Rainbow. If Rainbow's expansion energy is included retroactively, Kerr's should be too.

And finally, not only would retroactive application of this bill to 2006 put Kerr on equal footing with other facilities, it would also put a small slice of Kerr's power on an equal footing with other renewables. As mentioned, Kerr is a renewable resource that provides clean, reliable, and environmentally friendly power to Montana. By retroactively applying SB 45 to 2005, this legislature would be recognizing a small slice of Kerr's power production -- about 6 MW -- as the renewable energy resource that it is.

Reason 3. Amending the Retroactive Date to 2006 will be Good for Montana's Economy. CSKT has created a small energy corporation, Energy Keepers, Inc., with money it has been saving since 1985 to operate, manage, and market Kerr's power. Energy Keepers, Inc. is a startup company with eight full-time employees now, with the number of local jobs expected to grow to around 20 by 2015. And unlike PPL Montana's current operations, where there isn't a need for many of these employment positions because its Kerr operations are automated and the disposal of its corporate profits are controlled by its Pennsylvania-based parent company, Energy Keepers will add revenue to the local economy through local employment and profit distribution within Montana. The small amount of additional revenue that could be earned through RECs would be a big help to this startup company.

On the flip side, there is very little, if any, negative affect by putting Kerr back into SB 45. The renewable market would be changed little by making the retroactive date to 2005, as there would only be approximately 6 MW of additional renewable energy credits on the market. Additionally, smaller, local projects are protected. Pursuant to MCA 69-2-2004(3), *public utilities* have been required to fulfill their renewable-energy quotas by purchasing at least 50 megawatts in nameplate capacity from *community renewable*

*energy projects*, with this amount to increase to at least 75 megawatts in nameplate capacity in 2015. Kerr does not qualify as a community renewable energy project, and thus these smaller projects are largely protected from the small increase in the renewable market by adding Kerr.

Conclusion:

By changing the retroactive date to December 31, 2005, this legislature will be recognizing a slice of power from a renewable energy resource that will help keep our environment pristine for seven generations to come, create fairness, and promote a startup company that supports job creation and the local economy. For these reasons, we humbly ask that the legislature adopt the original date envisioned for this bill by amending SB 45, Section 1(10)(iii) to state that 'December 31, 2005' is the applicable retroactive date for an expansion of an existing hydroelectric project.

Representative Zolnikov has agreed to carry out this amendment.

Thank you for your time.